

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

Christopher Nielsen,

Respondent.

Case No. 16-96/18BEE0019

License No. 969853

**Order Regarding Proposed
Decision**

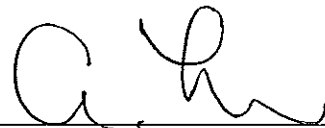
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. A hearing took place before Administrative Law Judge Emily Kimes-Schwiesow on March 2, 2018. The Respondent did not appear for the hearing. Judge Kimes-Schwiesow issued a proposed decision on March 5, 2018. The proposed decision was served upon the Respondent and the Board.

At a telephonic meeting on March 7, 2018, the Board voted to not initiate review of the proposed decision. Neither party appealed or filed a motion to vacate within the time allowed by 282 Iowa Administrative Code rules 11.23 and 11.28.

ORDER

THEREFORE, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 5th day of April, 2018.



Dr. Ann Lebo, Executive Director
On behalf of the Board

Copies to:

Christopher Nielsen (first-class mail)
RESPONDENT

Allison Schmidt (electronic mail)
ATTORNEY FOR STATE

IOWA BOARD OF EDUCATIONAL EXAMINERS

MAR 05 2018

IN THE MATTER OF)	DIA NO. 18BEE0019
)	CASE NO. 16-96
CHRISTOPHER NIELSEN,)	
)	
Respondent.)	PROPOSED DECISION

On December 18, 2017, the Iowa Board of Educational Examiners (Board) issued a Notice of Hearing and Statement of Charges against Christopher Nielsen (Respondent). The charges included:

- 1) Conviction of a disqualifying criminal offense, sexual exploitation by a school employee, in violation of 282 IAC 25.3(1)(b)(1).
- 2) Conviction of a disqualifying criminal offense, third-degree sexual abuse committed on or with a person who is under the age of 18, in violation of 282 IAC 25.3(1)(c).
- 3) Having sexual involvement with a student, in violation of 282 IAC 25.3(1)(c).
- 4) Sexual exploitation of a minor, in violation of 282 IAC 15.3(1)(d).
- 5) Student abuse, committing or soliciting a sexual act with a minor student, and soliciting, encouraging, and consummating a romantic or otherwise inappropriate relationship with a student, in violation of 282 IAC 25.3(1)(e)(3) and (4).

The charges were based on Respondent's guilty plea to Sexual Exploitation by a School Employee, in violation of Iowa Code section 709.15(5)(a), and Sexual Abuse in the Third Degree in violation of Iowa Code section 709.4(1)(b)(3)(d). The Notice of Hearing and Statement of Charges were served on Respondent at the Newton Correctional Facility on January 3, 2018.

On December 20, 2017, The Board issued an Amended Notice of Hearing and Statement of Charges. The charges included:

- 1) Conviction of a disqualifying criminal offense, sexual exploitation by a school employee, in violation of 282 IAC 25.3(1)(b)(1).

- 2) Conviction of a disqualifying criminal offense, third-degree sexual abuse committed on or with a person who is under the age of 18, in violation of 282 IAC 25.3(1)(c).
- 3) Committing or soliciting a sexual act with a minor student, in violation of 282 IAC 25.3(1)(e)(3).
- 4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student in violation of 282 IAC 25.3(1)(e)(4).

There was no change to the alleged factual circumstances. The Amended Notice of Hearing and Statement of Charges were served on Respondent at the Newton Correctional Facility on January 23, 2018. The hearing was held on March 2, 2018 in a third floor hearing room, Wallace State Office Building, Des Moines, Iowa. Assistant Attorney General Allison Schmidt represented the state. Respondent did not appear for hearing.

THE RECORD

The record includes the Board's November 4, 2017 Order that extended the 180 day time limit for the issuance of a final decision and State Exhibits 1-8 (See Exhibit Index for description)

FINDINGS OF FACT

1. Respondent Christopher Nielsen holds a Standard License (Folder #969853) with endorsements for K-6 teacher elementary classroom, K-8 social studies, 5-8 middle school generalist, and K-12 instructional strategist II: BD/LD. This license is current and will next expire on May 31, 2021. (Exhibit 3, pp. 6-8)
2. Christopher Nielsen began his employment as a guest teacher with the Clinton Community School District in 2006. He was hired as a middle school special education behavioral disordered teacher in 2008. (Exhibit 5, p. 19) On May 20, 2016, Respondent was arrested and charged with Sexual Abuse Third Degree for having sex with a juvenile. Respondent met with a 15 year old student twice in a hospital parking lot. Both meetings were confirmed via video surveillance cameras. The juvenile confirmed that the two had sexual intercourse in the Respondent's car at the second meeting. (Exhibit 7, p.264) On May 24, 2016, the District commenced an investigation and found cause to terminate Respondent's employment. Respondent submitted his resignation on May 26,

2016. (Exhibit 5, p.20) On May 26, 2016, the school district filed a Complaint notifying the Board of the Respondent's arrest. (Exhibit 4) The Board initiated an investigation. (Exhibit 5)

3. Respondent was charged with Sexual Exploitation by a School Employee, in violation of Iowa Code sections 709.15(5)(a), and Sexual Abuse in the Third Degree in violation of Iowa Code section 709.4(1)(b)(3)(d) in Clinton County District Court. On May 12, 2017, he entered a guilty plea to both charges. He was sentenced to prison for 10 years for sexual abuse in the third degree, and 5 years for sexual exploitation. At the time of hearing he was incarcerated at the Newton Correctional Facility. (Exhibit 2; Exhibit 7, pp. 264-271; Exhibit 8, pp. 272-275)

5. On December 18, 2017, the Board issued a Notice of Hearing and Statement of Charges against the Respondent charging him with 1) Conviction of a disqualifying criminal offense, sexual exploitation by a school employee, in violation of 282 IAC 25.3(1)(b)(1); 2) Conviction of a disqualifying criminal offense, third-degree sexual abuse committed on or with a person who is under the age of 18, in violation of 282 IAC 25.3(1)(c); 3) Having sexual involvement with a student, in violation of 282 IAC 25.3(1)(c); 4) Sexual exploitation of a minor, in violation of 282 IAC 15.3(1)(d); and 5) Student abuse, committing or soliciting a sexual act with a minor student, and soliciting, encouraging, and consummating a romantic or otherwise inappropriate relationship with a student, in violation of 282 IAC 25.3(1)(e)(3) and (4). The Notice of Hearing and Statement of Charges were served on Respondent at the Newton Correctional Facility on January 3, 2018.

On December 20, 2017, The Board issued an Amended Notice of Hearing and Statement of Charges. The charges included 1) Conviction of a disqualifying criminal offense, sexual exploitation by a school employee, in violation of 282 IAC 25.3(1)(b)(1); 2) Conviction of a disqualifying criminal offense, third-degree sexual abuse committed on or with a person who is under the age of 18, in violation of 282 IAC 25.3(1)(c); 3) Committing or soliciting a sexual act with a minor student, in violation of 282 IAC 25.3(1)(e)(3); and 4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student in violation of 282 IAC 25.3(1)(e)(4). There was no change to the alleged factual circumstances. The Amended Notice of Hearing and Statement of Charges were served on Respondent at the Newton Correctional Facility on January 23, 2018. Respondent did not file an Answer. (Exhibits 1, 2)

CONCLUSIONS OF LAW

I. Failure to Appear

282 IAC 11.7(1) provides that a notice of hearing may be served by personal service, certified mail with return receipt requested, first-class mail, or publication, as provided in the Iowa Rules of Civil Procedure. Respondent was served by certified mail, and he has acknowledged receipt of the Notice of Hearing and Statement of Charges on January 3, 2018, and the Amended Notice of Hearing and Statement of Charges on January 23, 2018. He did not file an Answer or request a continuance of the hearing.

282 IAC 11.23(1) provides that if a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

II. Conviction of Crimes

The legislature has authorized the Iowa Board of Educational Examiners to adopt rules providing for the denial or revocation of a license upon the board's finding, by a preponderance of the evidence, that a person has been convicted of a crime. In addition, the legislature designated certain crimes as automatically disqualifying a person from either receiving a license or continuing to hold a license.¹ The legislature designated both Third Degree Sexual Abuse and Sexual Exploitation by a School Employee as disqualifying crimes.²

The Board has adopted its Code of Professional Conduct and Ethics at 282 IAC chapter 25. 282 IAC 25.3(1)(b)(1) provides, in relevant part, that the board shall revoke a previously issued license if the licensee is convicted or found guilty of designated disqualifying criminal offenses after July 1, 2002. The disqualifying convictions listed in the rule include Third Degree Sexual Abuse and Sexual Exploitation by a School Employee.³

The preponderance of the evidence established that Christopher Nielsen violated 282 IAC 25.3(1)(b)(1) when he was convicted of the crimes of Third Degree Sexual

¹ Iowa Code section 272.2(14)(b).

² Iowa Code section 272.2(14)(b)(1)(b)(i) and (vii).

³ 282 IAC 25.3(1)(b)(1).

Abuse and Sexual Exploitation by a School Employee. Pursuant to both statute and Board rule, the Board is required to revoke his teaching license.

III. *Unethical Conduct*

The Code of Professional Conduct and Ethics at 282 IAC chapter 25 requires licensees to maintain professional relationships with all students both inside and outside of the classroom. The rule sets out a list of behaviors constituting unethical conduct without regard to the existence of a criminal charge or conviction.⁴ The list includes committing or soliciting a sexual act with a student or any minor, and soliciting, encouraging, or consummating a romantic relationship or otherwise inappropriate relationship with a student.⁵

The preponderance of the evidence established that Christopher Nielsen violated 282 IAC 25.3(1)(e)(3) and (4) when he engaged in a sexual relationship with a 15 year old student.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Standard License (Folder #969853) issued to Respondent Christopher Nielsen shall be REVOKED, effective when this Proposed Decision becomes final. IT IS FURTHER ORDERED that any expired licenses issued to Christopher Nielsen shall also be REVOKED.

Dated this 5th day of March, 2018.



Emily Kimes-Schwiesow
Administrative Law Judge

cc: Christopher Nielsen, Offender #1085983, Newton Correctional Facility, c/o Warden's Office, 307 S 60th Ave. W, Newton, IA 50208 (Restricted Certified Mail)

⁴ 282 IAC 25.3(1)(e).

⁵ 282 IAC 25.3(1)(e)(3) and (4)

Allison Schmidt, Assistant Attorney General, Iowa Department of Justice,
Hoover Building, 2nd Floor (LOCAL)

Dr. Ann Lebo, Executive Director, Iowa Board of Educational Examiners, Grimes
State Office Building (LOCAL)

Motion To Vacate Default

In accordance with 282 IAC 11.23(3), this decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated within the time provided by rule 11.28(17A,272). A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit or a person with personal knowledge of each such fact attached to the motion.

Appeal on the Merits

282 IAC 11.28 provides that a proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected by serving a notice of appeal with the board within 30 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA**

In the matter of)	Case No: 16-96
)	Folder No. 969853
CHRISTOPHER NIELSEN,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES
)	[AMENDED - REISSUED]¹

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Friday, February 2, 2018, before Administrative Law Judge Emily Kimes-Schwiesow, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 1:00 p.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 1:00 p.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code (IAC) chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of

¹ This Notice of Hearing and Statement of Charges was initially issued to Respondent on December 19, 2017. The following amendments were made necessitating this reissuance: Section B -- the original Counts III and IV were removed and the original Count V is now split into two separate counts.

the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Allison Schmidt
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Telephone (515) 281-3395

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Ann Lebo, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Schmidt at (515) 281-3395.

B. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

7. Respondent is charged with having been convicted of a disqualifying criminal offense, Sexual Exploitation by a School Employee, in violation of 282 Iowa Administrative Code rule 25.3(1)(b)(1).

Count II

8. Respondent is charged with having been convicted of a disqualifying criminal offense, Third-Degree Sexual Abuse committed on or with a person who is under the age of 18, in violation of 282 Iowa Administrative Code rule 25.3(1)(b)(1).

Count III

9. Respondent is charged with committing or soliciting a sexual act with a minor student, in violation of 282 Iowa Administrative Code rule 25.3(1)(e)(3).

Count IV

10. Respondent is charged with soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student, in violation of 282 Iowa Administrative Code 25.3(1)(e)(4).

C. JURISDICTION AND LEGAL AUTHORITY

11. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 IAC chapter 11.

D. FACTUAL CIRCUMSTANCES

12. Respondent holds a STANDARD LICENSE (FOLDER # 969853) with the following endorsements: K-6 Teacher Elementary Classroom, 5-8 Middle School Generalist, K-8 Social Studies, K-12 Instructional Strategist II: BD/LD. Respondent's license is current and will next expire on May 31, 2021.

13. During all material events of this case, Respondent was employed as a middle school teacher by the Clinton Community School District.

14. On May 26, 2016, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On August 4, 2017, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

15. Investigation revealed that Respondent pled guilty to one count of Sexual Exploitation by a School Employee, and was sentenced to five years incarceration. Respondent also pled guilty to Sexual Abuse in the Third Degree, and was sentenced to ten years incarceration.

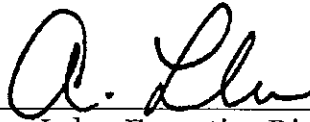
16. Investigation also revealed that Respondent had a sexual relationship with a fifteen year old female student. He met the student at night in a hospital parking lot.

E. SETTLEMENT

17. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process

are found at 282 IAC rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 26th day of December, 2017.



Ann Lebo, Executive Director
Iowa Board of Educational Examiners

Copies to:

Christopher Nielsen (first-class mail)
Offender # 1085983
c/o Newton Correctional Facility
RESPONDENT

Allison Schmidt (electronic mail)
ATTORNEY FOR STATE

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OF THE STATE OF IOWA**

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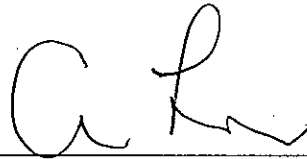
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E. SETTLEMENT

18. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 IAC rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 19th day of December, 2017.



Ann Lebo, Executive Director
Iowa Board of Educational Examiners

Copies to:

Christopher Nielsen (first-class mail)
Offender # 1085983
c/o Newton Correctional Facility
RESPONDENT

Allison Schmidt (electronic mail)
ATTORNEY FOR STATE